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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/821,875 | 04/12/2004 | Byoung-Woo Cho | 1749.1010 | 1817 |

21171 7590 03/28/2005
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EXAMINER

KAUFFMAN, BRIAN K

ART UNIT PAPER NUMBER

3765

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/821,875 | | CHO, BYOUNG-WOO | |
| | Examiner | | Art Unit | |
| | Brian K Kauffman | | 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner acknowledges that fig. 4 has been withdrawn and that the specification has been amended accordingly. The examiner also acknowledges that claim 8 has been added.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lo (6,493,880).

In regard to claims 1-2, Lo discloses elastic headwear comprising: a head-covering portion being stretchable in at least a circumferential direction thereof having a plurality of pieces (col. 3, line 67 and col. 4, lines 1-4), at least one piece being made of a stretchable knitted mesh which comprises at least one non-covered stretch yarn and a plurality of non-stretch yarns (col.5, lines 5-11); and a sweatband (25) being stretchable in at least a circumferential direction thereof (Col. 5, lines 16-17), wherein the non-covered stretch yarn and the plurality of non-stretch yarns are provided in rows without being twisted with each other.

In regard to claims 3 and 4, Lo discloses that the non-covered stretch yarn is either a spandex yarn (col. 4, lines 61-62).

In regard to claim 5, Lo discloses that the non-stretch yarns can be polyester (col. 5, lines 5-11).

In regard to claim 6, Lo discloses that the front pieces of the crown are stiffened (col. 4, lines 41-44).

In regard to claim 7, Lo discloses that a common way for adjusting the size of the cap employs an adjustable strap disposed at the back of the cap for adjustment by the wearer (col. 1, lines 15-17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lo's apparatus by including a size adjustment member disposed on the rear pieces to further adjust the size of the crown portion since it is a common practice in the art.

In regard to claim 8, Lo discloses a head covering portion of a headwear comprising a first portion (12, 13) corresponding approximately to a front of a user's head; a second portion (15, 16); and a third portion (14, 17) between the first and second portions, the second and third portions comprising a stretchable knitted mesh (col. 5, lines 5-11).

The most important characteristic of the head covering is the ability to be stretchable in the circumferential direction. Lo discloses a knitted mesh (col. 5, lines 6-7) and that the head covering portion be stretchable in the circumferential direction (col. 4, lines 1-4). Lo provides a clue to one of ordinary skill in the knitting art at col. 5, lines 6 & 7 where it is mentioned that a small amount of spandex is in the weft direction. If

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this were weft knitted, a statement of plying of feeding along with other yarn would be provided. Since stretch warp knit fabrics primarily receive their stretch characteristics from the stretch yarns, it is interpreted that the small amount of spandex in the weft direction implies a warp knit fabric. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a warp knitted mesh to produce the head covering portions that are stretchable in the circumferential direction as disclosed by Lo since Lo provides a clue to one of ordinary skill in the art of knitting that the fabric used is warp knitted fabric.

Response to Arguments

Applicant's arguments, see page 1, lines 11-19, filed 12/28/04, with respect to the rejection(s) of claim(s) 1-7 under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 U.S.C. 103(a). See the above rejections for a further explanation of the new rejections.

In response to the applicant's argument that Lo's invention discloses that the front gore includes a stretchable fabric backed with a stiffening material such as nylon web, the claims do not recite anything about the construction of the front gore. Therefore, this argument is moot.

In response to the applicant's argument that Lo's invention discloses a weft knitted mesh as apposed to a warp knitted mesh, Lo provides a clue to one of ordinary skill in the knitting art at col. 5, lines 6 & 7 where it is mentioned that a small amount of

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spandex is in the weft direction. If this were weft knitted, a statement of plying of feeding along with other yarn would be provided. Since stretch warp knit fabrics primarily receive their stretch characteristics from the stretch yarns, it is interpreted that the small amount of spandex in the weft direction implies a warp knit fabric. Warp knit fabrics structural characteristics do not provide the inherent stretch capabilities of weft knit fabrics and rely heavily on stretch yarns for their stretchability. Further Lo uses woven fabric as an alternative, which more closely resembles warp knits than weft knits.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K Kauffman whose telephone number is (571)272-4988. The examiner can normally be reached on M-F every week.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571)272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKK
3/19/05


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